

**Statement of
Robert Anderson
Deputy Assistant Director for Minerals, Realty and Resource Protection
Bureau of Land Management
U.S. Department of the Interior**

**Committee on Oversight and Government Reform
U.S. House of Representatives**

**Oversight Hearing on the Applicability of Federal Requirements that Protect Public Health
and the Environment to Oil and Gas Development**

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Mr. Chairman and Members of the Committee, thank you for the opportunity to appear here today to discuss the applicability of Federal requirements that protect public health and the environment in the context of onshore oil and gas development. My testimony today will focus solely on the onshore Federal mineral estate entrusted to the Bureau of Land Management (BLM).

The BLM manages 258 million acres of public land as well as 700 million acres of subsurface mineral estate. Under the Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947, as amended, the BLM is responsible for managing oil and gas leasing on BLM, National Forest System and other Federal lands, as well as on private lands where the mineral rights have been retained by the Federal government. The BLM administers over 48,000 onshore oil and gas leases, of which nearly 23,000 are currently producing. Also, the 77,000 Federal onshore oil and gas wells account for eleven percent of the Nation's natural gas production and five percent of domestic oil production, with royalty values exceeding nearly \$12 billion total for Fiscal Years 2001 through 2006.

Multiple Stages of Environmental Protection

The BLM carries out its responsibility to protect the environment throughout the process of oil and gas resource exploration and development on public lands. Resource protection is considered throughout the land use planning process when Resource Management Plans are prepared and when an Application for Permit to Drill (APD) is processed. The BLM's inspection and enforcement and monitoring program is designed to ensure that operators comply with relevant laws and regulations as well as specific stipulations set forth during the permitting process.

Land-Use Planning

The Resource Management Plan (RMP) for an area sets the landscape-level guidance for the management of resources under a variety of considerations (ecological, cultural, historic, social, or aesthetic). A team of interdisciplinary specialists conduct a National Environmental Policy Act (NEPA) analysis as part of the planning process. This analysis includes evaluating potential environmental impacts from surface uses the BLM would allow in the planning area and

allocating where the public lands may be open or closed to a variety of uses, among them oil and gas leasing. The RMP may provide lease stipulations limiting surface use or broad descriptions of mitigating measures including Best Management Practices (BMP) that should be imposed to protect resources.

The BLM engages the public, gateway (adjacent) communities, and interested parties in land use planning decisions that comply with the Federal Land Policy and Management Act of 1976 (FLPMA), NEPA, and the BLM's internal policy requirements for public involvement.

Site-Specific Implementation and Applications for Permit to Drill

Site-specific environmental review documents, such as APDs, typically tier to more general land use plans, and when read together, outline the overall management and protection criteria for the project area. Before an APD is approved, the BLM must ensure the operation will comply with the land use plan and relevant statutes, regulations, and guidelines. This process involves identifying and enforcing stipulations identified in the land use plan together with more site-specific conditions of the approval that may be placed on the APD before a well can be drilled. Typical stipulations include major or moderate restrictions on surface use in areas identified as having water resources, such as rivers, lakes, wetlands, riparian areas and natural springs, and the imposition of buffer zones around these resources. In addition, the BLM may attach conditions of approval, which are site-specific mitigation measures developed as a result of the on-site visit and an environmental review conducted by an interdisciplinary team.

Environmental and Public Health Considerations

Relevant Statutes and Regulations

The BLM is required to review proposals to develop and produce oil and gas wells on Federal land and ensure adherence to NEPA, FLPMA, the Mineral Leasing Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, other applicable statutes, and related regulations.

The BLM's oil and gas leasing and development process must comply with NEPA. Compliance with NEPA can range from developing an environmental impact statement to application of a categorical exclusion (CX). The Council on Environmental Quality (CEQ) Regulations implementing NEPA define "categorical exclusion" as "a category of actions which do not individually or cumulatively have a significant effect on the human environment." Thus, a CX is not intended to avoid NEPA but to ensure its efficient application. The CEQ regulations allow Federal agencies to propose categories of actions that meet this requirement. Application of a CX can help avoid the inefficiency of unnecessary analyses by recognizing that past analyses of similar projects have not revealed any significant impacts over time. The CEQ regulations also require agencies to provide for extraordinary circumstances when administratively establishing their CXs. Extraordinary circumstances identify those situations where a normally excluded action may have a significant environmental effect. If one of these extraordinary circumstances apply, then a CX may not be used and an environmental assessment must be prepared. The Department of the Interior's extraordinary circumstances include those related to public health and safety as well as specific environmental, cultural, and social impacts.

The BLM-established CXs related to oil and gas operations are found in the Departmental Manual at 516 Chapter 11 and include:

- Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands, where the subject lands are already in production;
- Approval of mineral lease adjustments and transfers, including assignments and subleases;
- Approval of unitization agreements, communitization agreements, drainage agreements, underground storage agreements, development contracts, or geothermal unit or participating area agreements;
- Approval of suspensions of operations, force majeure suspensions, and suspensions of operations and production;
- Approval of royalty determinations, such as royalty rate reductions; and
- Approval of Notices of Intent to conduct geophysical exploration of oil, gas, or geothermal, pursuant to 43 CFR 3150 or 3250, when no temporary or new road construction is proposed.

In addition to these CXs, Congress provided for five statutory CXs in Section 390 of the Energy Policy Act of 2005. These categorical exclusions include:

- Individual APDs with proposed surface disturbances of less than five acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed;
- Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within five years;
- Drilling an oil or gas well within a developed field for which a land use plan or any environmental document pursuant to NEPA analyzed drilling as a reasonably foreseeable activity and was approved within five years of drilling the proposed APD;
- Placement of a pipeline in a right-of-way corridor approved within the last five years; and
- Maintenance of a minor activity, other than any construction or major renovation of a building or facility.

The Administration has interpreted that these CXs provided for under EPLA do not require the extraordinary circumstances review.

BLM Policy Guidance

The BLM's policy guidance sets forth additional requirements to ensure protection of the environment and public health. Onshore Oil and Gas Order No. 1 (Order No. 1) establishes the requirements that companies must meet to obtain approval for oil and gas exploration and to drill, produce, plug, and properly abandon a well on Federal and Indian lands. For example, water quality is addressed through Order No. 1, which states that the operator must not conduct operations in areas subject to mass soil movement, riparian areas, floodplains, lakeshores, and/or wetlands unless otherwise approved. Order No. 1 also specifies that the operator must identify the source, access route, and transportation method for all water anticipated for use in drilling the proposed oil and/or gas well. Regarding groundwater, Order No. 1 requires operators to identify zones potentially containing usable water and their plans for protecting such resources. This plan typically requires isolating usable water zones to avoid potential cross contamination with other geologic formations.

Order No. 1 encourages operators to use environmental Best Management Practices (BMPs), which are state-of-the-art mitigation measures designed to provide for safe and efficient operations while minimizing undesirable impacts to the environment. A July 21, 2005, Government Accountability Office report on oil and gas development found these strategies to be effective, stating that “bundling of permit applications can encourage companies to plan their drilling operations more carefully and help the BLM better assess the cumulative environmental impacts of drilling activities.”

In addition, operators are required to make good faith efforts to reach surface access agreements with private surface owners, provide opportunities for private surface owners to participate in on-site inspection meetings, and comply with cultural and endangered species regulations on private surface as well as Federally-owned interests.

Inspection and Enforcement

The BLM also inspects oil and gas operations to ensure compliance with statutes, regulations, and permit stipulations that serve to protect the environment and human health and safety. The BLM continues to conduct field exams, inspections, and enforcement for every APD filed by the oil and gas industry. The BLM finds that most oil and gas operators diligently comply with lease stipulations and conditions of approval, and operate effective, environmentally-sound exploration and development facilities. The Administration continues to devote additional resources to inspection and enforcement activities, including a portion of the funds allocated to the Federal Permit Streamlining Pilot Project under EPAct. Since 2005, the number of inspections in the EPAct pilot offices has increased 78 percent (from 6,526 in 2005 to 11,605 in 2007). The Administration has requested an additional \$3.1 million in FY 2008 for inspection, enforcement, and monitoring activities, which will allow BLM to complete an additional 510 inspections in 2008.

Conclusion

In conclusion, Mr. Chairman, thank you for the opportunity to discuss the application of Federal statutes, regulations, and policy guidance that work to protect public health and the environment during oil and gas development and operations on Federal lands. The BLM plays a vital role in this nation’s energy security, and we are committed to ensuring that development of our energy resources is done in an environmentally sound and responsible manner.

This concludes my testimony. I would be happy to answer any questions you may have.